IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5214 OF 2007

Suresh Varma .... Petitioner

versus

Shree Maheshwhar Hydel Power Corporation limited. ..... Respondent.

Shri Mihir Desai for the petitioner
Ms. Ethal Periera with Manisha Chandwani i/b JUris Consultus for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 25TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is original defendant. The suit filed by the Plaintiff in the year 2001 did not really proceed further for a span of about six years as the suit was dismissed in default. It came to be restored on 18-1-2007. On 21-1-2007 the plaintiff filed an affidavit of examination-in-chief and the case was fixed for cross examination on 22-2-2007. The petitioner/defendant sought adjournment, which was granted, and the matter was adjourned to 15-6-2007. Yet again the petitioner made a request for

adjournment, which was granted subject to payment of costs and the case was fixed on 18-6-2007 for cross examination. Again on 18-6-2007 the Petitioner applied for grant of adjournment and the trial court rejected the said request, and adjourned the matter to 2-7-2007 on which date the court has proceeded further and closed the case for orders.

3. The learned counsel for the petitioner submits that the petitioner is an activist of Narmada Bachao Andolan and is acting in the interest of the affected persons. The suit is for injunction seeking to restrain the petitioner from making defamatory statements. The submission is that if the petitioner is not permitted to contest the suit on merit, the petitioner is likely to suffer irreparable loss, undue hardship and inconvenience. It is submitted that for whatever inconvenience is caused to the respondent, the respondent/plaintiff can be compensated in terms of money. Having regard to the nature of controversy, I deem it appropriate to grant one more opportunity to the petitioner to contest the suit. So that the decision on merit of the matter could be reached, obviously after compensating the respondent whose witness had to come from Madhya Pradesh on four occasions. As I am of the view that the petitioner needs to be granted an opportunity to cross examine

the witness for the respondent/plaintiff and a further chance to participate in the proceedings of the suit, I am inclined to allow the petition as in my view denying such an opportunity is likely to cause miscarriage of justice. Hence writ petition is allowed.

4. The learned counsel appearing for the petitioner unanimously stated that hereafter the petitioner will not seek any single adjournment and shall co-operate with the City Civil Court in expeditious disposal of the suit. Both the learned advocates appearing for the respective parties are in agreement that the suit need to be disposed of expeditiously within a time bound period.

4. The respondent is permitted to cross examine the witness of the plaintiff and undertakes to remain present for cross examination before the City Civil Court on 20-11-2007 on which date, I am informed that the suit is already fixed. The City Civil Court shall proceed to decide the suit in accordance with the law after permitting the respondent to cross examine the plaintiff’s witness and petitioner shall be permitted to lead his evidence as well. I hope and trust that the City Civil Court shall decide the suit as expeditiously as possible and preferably within a

period of three months from today. This order is subject to payment of Rs. 10,000/- by the petitioner to the respondent. The costs shall be deposited in the City Civil Court on 20-11-2007. Failure on the part of the petitioner to deposit the costs as directed, in the City Civil Court, shall result in revocation of this order.

5. Writ Petition is thus allowed. Impugned orders are quashed and set aside. Rule made absolute in the above terms.

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